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14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

17 Riverbed Technology, Inc.

18 Plaintiff,

19 vs.

20 Realtime Data LLC d/b/a IXO,

21 Defendant.  
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23

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Attorneys for Defendant  
*REALTIME DATA LLC*

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)  
) Case Number: C 3:17-cv-3182-EMC  
)  
) STIPULATION & ORDER RE:  
) DISCOVERY OF ELECTRONICALLY  
) STORED INFORMATION FOR PATENT  
) LITIGATION  
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24 Upon the stipulation of the parties, the Court ORDERS as follows:

25 1. This Order supplements all other discovery rules and orders. It streamlines  
26 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and  
27 inexpensive determination of this action, as required by Federal Rule of Civil Procedure 1.”

28 2. This Order may be modified in the Court’s discretion or by stipulation.

1           3.       As in all cases, costs may be shifted for disproportionate ESI production  
2 requests pursuant to Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or  
3 dilatory discovery tactics are cost-shifting considerations. A party's meaningful compliance  
4 with this Order and efforts to promote efficiency and reduce costs will be considered in cost-  
5 shifting determinations.

6           4.       The parties are expected to comply with the District's E-Discovery Guidelines  
7 ("Guidelines") and are encouraged to employ the District's Model Stipulated Order Re: the  
8 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer  
9 regarding Electronically Stored Information.

10          5.       Absent a showing of good cause, general ESI production requests under Federal Rules  
11 of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court,  
12 shall not include metadata. However, fields showing the date and time that the document was sent and  
13 received, as well as the complete distribution list, shall generally be included in the production if such  
14 fields exist.

15          6.       Absent agreement of the parties or further order of this court, the following parameters  
16 shall apply to ESI production:

- 17           a.       **General Document Image Format.** Each electronic document shall be produced  
18 in single-page Tagged Image File Format ("TIFF") format except for documents  
19 where production in TIFF would be impractical (including, for example, large  
20 spreadsheets). TIFF files shall be single page and shall be named with a unique  
21 production number followed by the appropriate file extension. Load files shall be  
22 provided to indicate the location and unitization of the TIFF files. If a document is  
23 more than one page, the unitization of the document and any attachments and/or  
24 affixed notes shall be maintained as they existed in the original document. To the  
25 extent possible, produced data will be de-duplicated based on an MD5 or SHA-1  
26 hash value and across custodians.
- 27           b.       **Text-Searchable Documents.** No party has an obligation to make its production  
28 textsearchable; however, if a party's documents already exist in text-searchable

1 format independent of this litigation, or are converted to text-searchable format for  
2 use in this litigation, including for use by the producing party's counsel, then such  
3 documents shall be produced in the same text-searchable format at no cost to the  
4 receiving party.

5 c. **Footer.** Each document image shall contain a footer with a sequentially ascending  
6 production number.

7 d. **Native Files.** A party that receives a document produced in a format specified  
8 above may make a reasonable request to receive the document in its native format,  
9 and upon receipt of such a request, the producing party shall produce the document  
10 in its native format.

11 e. **No Backup Restoration Required.** Absent a showing of good cause, no party  
12 need restore any form of media upon which backup data is maintained in a party's  
13 normal or allowed processes, including but not limited to backup tapes, disks,  
14 SAN, and other forms of media, to comply with its discovery obligations in the  
15 present case.

16 f. **Voicemail and Mobile Devices.** Absent a showing of good cause, voicemails,  
17 PDAs and mobile phones are deemed not reasonably accessible and need not be  
18 collected and preserved.

19 7. General ESI production requests under Federal Rules of Civil Procedure 34 and  
20 45 shall not include email or other forms of electronic correspondence (collectively "email").  
21 To obtain email parties must propound specific email production requests.

22 8. Email production requests shall only be propounded for specific issues, rather  
23 than general discovery of a product or business.

24 9. Email production requests shall be phased to occur after the parties have  
25 exchanged initial disclosures and basic documentation about the patents, the prior art, the  
26 accused instrumentalities, and the relevant finances. While this provision does not require the  
27 production of such information, the Court encourages prompt and early production of this  
28 information to promote efficient and economical streamlining of the case.

1           10.     Email production requests shall identify the custodian, search terms, and time  
2 frame. The parties shall cooperate to identify the proper custodians, proper search terms and  
3 proper timeframe as set forth in the Guidelines.

4           11.     Each requesting party shall limit its email production requests to a total of five  
5 custodians per producing party for all such requests. The parties may jointly agree to modify  
6 this limit without the Court's leave. The Court shall consider contested requests for additional  
7 custodians, upon showing a distinct need based on the size, complexity, and issues of this  
8 specific case. Cost-shifting may be considered as part of any such request.

9           12.     Each requesting party shall limit its email production requests to a total of five  
10 search terms per custodian per party. The parties may jointly agree to modify this limit without  
11 the Court's leave. The Court shall consider contested requests for additional search terms per  
12 custodian, upon showing a distinct need based on the size, complexity, and issues of this  
13 specific case. The Court encourages the parties to confer on a process to test the efficacy of the  
14 search terms. The search terms shall be narrowly tailored to particular issues. Indiscriminate  
15 terms, such as the producing company's name or its product name, are inappropriate unless  
16 combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A  
17 conjunctive combination of multiple words or phrases (*e.g.*, "computer" and "system") narrows  
18 the search and shall count as a single search term. A disjunctive combination of multiple words  
19 or phrases (*e.g.*, "computer" or "system") broadens the search, and thus each word or phrase  
20 shall count as a separate search term unless they are variants of the same word. Use of  
21 narrowing search criteria (*e.g.*, "and," "but not," "w/x") is encouraged to limit the production  
22 and shall be considered when determining whether to shift costs for disproportionate  
23 discovery. Should a party serve email production requests with search terms beyond the limits  
24 agreed to by the parties or granted by the Court pursuant to this paragraph, this shall be  
25 considered in determining whether any party shall bear all reasonable costs caused by such  
26 additional discovery.

27           13.     Email production requests shall be served no later than 30 days after the Claim-  
28 Construction Hearing.

1           14.     Nothing in this Order prevents the parties from agreeing to use technology-  
2 assisted review and other techniques insofar as their use improves the efficacy of discovery.  
3 Such topics should be discussed pursuant to the District's E-Discovery Guidelines.  
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1                   **IT IS SO STIPULATED**, through Counsel of Record.

2                   Dated: December 13, 2017

3                   **HAYNES AND BOONE, LLP**

4                   By: /s/ Matthew P. Chiarizio

5                   Attorney for Plaintiff  
6                   RIVERBED TECHNOLOGIES, INC.

7                   **RUSS AUGUST & KABAT**

8                   By: /s/ Paul A. Kroeger

9                   Attorney for Defendant  
10                  REALTIME DATA, LLC

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12                  **ATTESTATION:** Pursuant to Local Rule 5-1(i)(3) I hereby attest that concurrence in the filing  
13                  of this document has been obtained from Paul A. Kroeger.

14                  By: /s/ Matthew P. Chiarizio

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17                  **IT IS SO ORDERED** that the foregoing Agreement is approved.

18  
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20                  Dated:        12/19/17

